

Jul 6, 7:22 PM EDT

Ruling prompts bid for fed control of Nevada environment programs

By BRENDAN RILEY
Associated Press Writer

CARSON CITY, Nev. (AP) -- A state ruling Thursday against a mining watchdog group prompted a move to seek a federal takeover of the environmental protection programs now delegated to Nevada.

The move by Great Basin Mine Watch, the Progressive Leadership Alliance of Nevada, Nevada EcoNet, Sierra Nevada Alliance, Citizens Alert, Western Shoshone Defense Project and others followed a decision by the state Environmental Commission to limit efforts by the mine watch group to stop pollution from the old Big Springs gold mine in Elko County.

A three-member panel of the Environmental Commission dismissed the group's challenge of the way the state monitors the mine, citing an attorney general's opinion that says a 2005 law limits participation in such cases only to those with a financial stake in the outcome.

State Wildlife Director Terry Crawford, who chaired the commission panel, said the law has created an "awful" restriction on public participation in state agency decisions - but left the panel with "little, if any, wiggle room."

Glenn Miller, a University of Nevada environmental scientist and a mine watch board member, said after the commission meeting that the federal Environmental Protection Agency will be asked to yank Nevada's delegated authority to oversee the federal Clean Air Act and Clear Water Act programs.

"Nobody wants that, but if this is the way decisions are going to be made, there's no other choice," Miller said. The takeover request had been outlined in a recent letter to the EPA from another public interest group, Advocates for the West.

Nicole Rinke, attorney for the Western Mining Action Project which is working with Great Basin Mine Watch on the mine issue, told the commission that relying on Attorney General George Chanos' opinion puts the state in violation of federal law. She added the new state law has constitutional flaws.

Rinke also said the plain language of the new law creates the "absurd" result of limiting formal participation in the Big Springs mine licensing case - and many other proceedings before various state agencies - only to those who would have

a direct financial benefit from issuance of a license or who would be hurt if a license wasn't granted.

But someone who faces financial harm from issuance of a license doesn't have the right to challenge that license, Rinke said, adding that's clearly unconstitutional and runs counter to explicit federal rules designed to ensure citizen participation in Clean Water Act matters.

The state Division of Environmental Protection cited the new law in trying to limit efforts by the mine watch group and others who say their intervention is necessary to stop pollution from the mine from reaching the north fork of the Humboldt River.

Division spokesman Dante Pistone said the commission's decision was warranted given the attorney general's opinion and the wording of the new law.

"We don't have the luxury of choosing which laws we obey and which ones we don't," he added.

Chanos' June 22 opinion, written by Deputy Attorney General David Newton, sided with the DEP's legal counsel, William Frey, in saying the 2005 law change limits appeals in such cases only to those with a financial stake in the outcome.

The law change got little or no publicity during the 2005 session, but Newton said there's evidence in committee minutes of the intent to limit appeals. But Rinke said that's not the case.

State Assemblywoman Sheila Leslie, D-Reno, has said she will try to ensure public access through changes in the 2007 Legislature to SB428, the 2005 law.

Jim Wadhams, a lobbyist with mining industry clients who says he pushed the 2005 legislation on behalf of independent insurance agents, has said he didn't envision the tactic that's being used by the DEP to try to block the Great Basin appeal.

The Big Springs Mine, owned by the AngloGold Ashanti corporation, hasn't operated for 10 years. It's one of many holdings of AngloGold Ashanti, a global company with assets in key gold producing regions in ten countries.

The state division issued a permit last July that authorized permanent closure of the mine. Great Basin Mine Watch said the division failed to deal with continuing discharges of salt, selenium, arsenic and manganese - all toxic to aquatic life in high concentrations.

The north fork of the Humboldt cuts through the Toiyabe National Forest in the Independence Range, a popular hunting and fishing area. Fish in the river include the Lahontan cutthroat trout, a threatened species.

This article is posted on the web at:

<http://www.lasvegassun.com/sunbin/stories/nevada/2006/jul/06/070610254.html>